



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

Reading
copy

REPLY TO THE ATTENTION OF:

D-8J

JUN 10 2004

CERTIFIED MAIL
RETURN RECEIPT REQUESTED
AND REGULAR MAIL

Michael B. Clarke
President
Lone Star Industries, Inc.
10401 North Meridian Street
Suite 400
Indianapolis, Indiana 46290

Re: Off-Site Rule Unacceptability Notice
Lone Star Industries, Inc.
EPA ID# IND 006 419 212

Dear Mr. Clarke:

This letter is to notify you that the United States Environmental Protection Agency (U.S. EPA) has determined that conditions exist at Lone Star Industries, Inc. (EPA ID number IND 006 419 212) (Lone Star), that make this facility unacceptable for the receipt of off-site wastes generated as a result of any response activity under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA).

This determination of unacceptability is based on the violations cited in the February 5, 2004 60-day notice of unacceptability as discussed below. This facility will remain unacceptable until such time as the U.S. EPA notifies the owner or operator otherwise. The implementation of this notice does not prohibit U.S. EPA or delegated State programs from taking appropriate enforcement actions under the Resource Conservation and Recovery Act, the Toxic Substances Control Act, the Clean Air Act, CERCLA, state regulations or other laws.

On September 22, 1993, the Procedures for Planning and Implementing Off-Site Response Actions (Off-Site Rule) was published in the Federal Register (58 Fed. Reg. 49200). The purpose of the Off-Site Rule is to ensure that wastes from CERCLA sites are sent to environmentally sound facilities and do not contribute to future environmental problems. The Off-Site Rule was codified in the National Oil and Hazardous Substances Pollution Contingency Plan at 40 C.F.R. § 300.440, and supersedes the previously published Off-Site Policy and guidance. See also, CERCLA Section 121(d)(3), 42 U.S.C. 9621(d)(3).

The February 5, 2004 60-day notice of unacceptability was based on information gained during an inspection performed by the Indiana Department of Environmental Management (IDEM) and includes violations noted in the Notice of Violation sent to Lone Star on May 22, 2003, by IDEM. The current determination is based on these same violations and on additional information presented in an informal conference on March 16, 2004 as well as additional correspondence between Lone Star and the state of Indiana. Following is an analysis of the current compliance status for each of the violations cited in the February 5 letter. All of the violations cited are the result of an incident that occurred on October 7, 2002.

1. 40 C.F.R. § 265.17(b) :

Where specifically required by other sections of this part, the treatment, storage, or disposal of ignitable or reactive waste, and the mixture or commingling of incompatible wastes, or incompatible wastes and materials, must be conducted so that it does not:

- (1) Generate extreme heat or pressure, fire or explosions, or violent reaction;
- (2) Produce uncontrolled toxic mists, fumes, dusts, or gases in sufficient quantities to threaten human health;
- (3) Produce uncontrolled toxic mists, fumes, dusts, or gases in sufficient quantities to pose a risk of fire or explosions

After reviewing the available information, my staff has concluded that item 3 does not apply. However, it is apparent that a reaction, potentially a violent one, did occur which resulted in the generation of enough heat and products of reaction to raise the internal pressure of the tank to the point where safety valves were activated. In addition, it appears that some vapors from the tank escaped to the atmosphere based on the observation in Lone Star's internal report of a strong smell of vinegar in the air.

These consequences were the result of inadequately testing the incoming materials for compatibility with residues in the tank. Information provided by IDEM indicates that satisfactory changes in the acceptance testing procedures for incoming wastes have been made to adequately reduce the likelihood of such a reaction happening again. Therefore, although it seems likely that "extreme heat" and possibly "extreme pressure" were produced during the incident, sufficient measures have been taken to meet the requirements to return to compliance from this relevant violation under the requirements of the Off-Site Rule.

Insufficient information, however, is available to judge whether or not the release of vapors was environmentally significant. Therefore, Lone Star will remain unacceptable due to the relevant violation of an environmentally significant release of vapors until either the enforcement action with the state of Indiana for this violation is resolved or further information sufficient to document that the release was not environmentally significant is submitted.

2. 40 C.F.R. § 265.32(d):

The owner or operator of a hazardous waste facility must equip the facility with water at adequate volume and pressure to supply water hose streams, or foam producing equipment, or automatic sprinklers, or water spray systems.

After reviewing the available information, my staff has concluded that a relevant violation related to this requirement did not occur.

3. 40 C.F.R. § 265.56(i):

In terms of emergency procedures, the owner or operator of a hazardous waste facility must notify the Commissioner and appropriate State and local authorities, that the facility is in compliance with paragraph (h) of this section before operations are resumed in the affected area(s) of the facility.

40 C.F.R. § 265.56(h) requires that the emergency coordinator ensure that, in the affected area(s) of the facility: (1) no waste that may be incompatible with the released material is treated, stored, or disposed of until cleanup are completed; and (2) all emergency equipment listed in the contingency plan is cleaned and fit for its intended use before operations are resumed.

After reviewing the available information carefully, my staff has determined that, since the fire hydrants are not listed in the contingency plan list of emergency equipment, a violation related to this requirement did not occur. However, I am concerned that the fire hydrants are not listed in the list of emergency equipment in the contingency plan and strongly suggest that the list of emergency equipment be amended to include the fire hydrants. It is my interpretation that if the fire hydrant which experienced the problems during the incident was listed in the contingency plan, it should have been certified as "fit for its intended use" before operations were resumed.

4. 40 C.F.R. § 265.56(j):

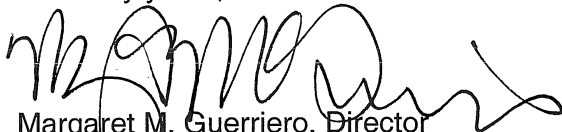
In terms of emergency procedures, the owner or operator must note in the operating record the time, date, and details of any incident that requires implementing the contingency plan. Within 15 days after the incident, he must submit a written report on the incident to the Commissioner.

As of the date of this letter, a sufficient report on the incident has not been submitted to the Commissioner of the IDEM. Mr. Patterson and Mr. Chrispell made the argument during the March 16, 2004, conference that the internal report presented to the IDEM inspector on October 22, 2002 substantively met all the requirements of 40 C.F.R. § 265.56(j). However, I respectfully disagree. The internal report presented to my staff did not address the requirement in 40 C.F.R. § 265.56(j)(6) to make "[a]n assessment of actual or potential hazards to human health or the environment." I believe, that since the report indicated some vapors from the hazardous waste storage tank were released to the environment, that this requirement applies. Therefore, this is a relevant violation which has not been addressed. Lone Star will remain unacceptable until a complete written incident report is submitted that addresses all requirements of 40 C.F.R. § 265.56(j).

You may request that the Regional Administrator reconsider this unacceptability determination. Such a request must be made in writing within 10 calendar days after receipt of this letter. Such a review does not automatically stay the determination beyond the 60-day period.

This letter is being sent to you by both certified and first class mail, return receipt requested, in order to ensure that you receive it promptly. If you wish to request an informal conference, or submit written comments, or if you have any questions regarding this letter, you may write to William Damico, U.S. EPA Region 5, 77 West Jackson Blvd., DE-9J, Chicago, Illinois 60604, or call him at 312-353-8207.

Sincerely yours,



Margaret M. Guerriero, Director
Waste, Pesticides and Toxics Division

Enclosure

cc: Aubrey N. Sherif, Senior Environmental Manager
Hazardous Waste Section
Indiana Department of Environmental Management